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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,262	02/12/2002	Wei C. Moline	57451US002	5027
32692	7590	05/19/2004	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			WELLS, LAUREN Q	
			ART UNIT	PAPER NUMBER

1617

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/074,262	Applicant(s) MOLINE, WEI C.	
	Examiner Lauren Q Wells	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 12-14,32,34 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11,15-31,33,35 and 37-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-45 are pending. Claims 12-14, 32, 34 and 36 are withdrawn from consideration, as they are directed to nonelected subject matter. The Amendment filed 2/23/04, amended claims 1, 20, 25, 32 and 33.

Applicant's arguments with respect to claims 1-13, 15-31, 33, 35, 37-45 have been considered but are moot in view of the new ground(s) of rejection.

112 Rejection Maintained

The rejection of claims 1-13, 15-31 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed 11/21/03, and those found below.

Applicant argues, "The term 'derivative' is defined through example, particularly in the description of classes 11 (page 23) and 13 (page 25), for example". This argument is not persuasive. First, the Examiner respectfully points out that "derivative" is being read in the context of "polyalkoxylated derivative". Second, the Examiner respectfully points out that neither pages 23 or 25 define this term or make it clear. Pages 23 teaches polyethoxylated polyhydric alcohols and page 25 teaches sorbitan fatty acid esters. This does not render the term "polyalkoxylated derivative" clear and definite.

Applicant argues, " 'a major' amount is clear to one of skill in the art. Even though it is a relative term, it is not without definition. The major component is the one present in the largest amount". This argument is not persuasive. This term encompasses any amount, i.e., less than 1% to greater than 99%. Thus, the metes and bounds of this claim are unascertainable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-11, 15-31, 33, 35, 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohammadi et al. (6,503,517) in view of Bell et al. (2003/0113357).

Mohammadi et al. exemplify an after shave lotion comprising 40.06% water, 16% ethanol, thereby meeting the ratio of alcohol to water in the instant independent claims, 2.62% steareth-2 (polyethoxylated alcohol and ester emulsifier), and 0.87% steareth-21 (polyethoxylated alcohol and ester emulsifier), 1% butylene glycol (emollient), 0.1% disodium EDTA (salt), 10% crosslinked silicone elastomer in cyclomethicone (stabilizer), 1% cyclomethicone (stabilizer), 5% carbopol 1382 (polymeric thickening agent), see Col. 9, lines 14-49. For inorganic powders (pearlescence agents) see Col. 3, lines 48-52. For botanical extracts (perfumes and fragrances), see Col. 4, lines 27-29. For waxes and liquid emollients, see Col. 3, lines 8-44. The reference lacks a teaching of the viscosity. The reference further lacks a ratio of wax to liquid emollients.

Bell et al. teach skin care compositions. Skin care lotions are taught as having a viscosity of 5,000-200,000mPa.s (centipoises) at 25 C. See [0041].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the after shave lotion of Mohammadi et al. as having a viscosity of 5,000-200,000 centipoises, as taught by Bell et al., because Bell et al. teach lotions as having viscosities of 5,000-200,000 centipoises and Mohammadi et al. teach their after shave as a lotion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the ratio of wax to liquid emollients as 3:1-1:3, using the teachings of

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Mohammadi et al., a) because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (In re Aller, 105 USPQ 233), and b) because of the expectation of achieving a product wherein the ratio of wax to liquid ingredients can be modified to meet the requirements of the form of the composition (i.e., gel, stick, solution. . .).

Since the combined references teach the composition of the instant claims, the combined references teach a composition that does not separate more than about 10% by volume when centrifuged for 20 minutes at 2275xg, and that has a melt temperature of greater than about 25 C when in the absence of an auxiliary thickener.

It is respectfully pointed out that an aftershave is applied to the skin after shaving. Hence the name, "after shave".

It is further respectfully pointed out that a composition and its properties are inseparable. Thus, applying the same composition after shaving to the skin, reduces skin irritation.

It is respectfully pointed out that the instant specification teaches the emulsifiers of Mohammadi et al. (steareth 2 and 21) as having the HLB values recited in the instant claims.

Claims 6 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohammadi et al. in view of Bell et al. as applied to claims 1-5, 7-11, 15-31, 33, 35, 38-45 above, and further in view of Asmus et al. (6,090,395).

Mohammadi et al. and Bell et al. are applied as discussed above. The references lacks preferred ratios of alcohol to water and dialkoxy dimethicone and polyether/polysiloxane copolymer.

Asmus et al. teach stable hydroalcoholic compositions. It is taught that compositions having alcohol to water ratios within the range 40:60 to 95:5 result in a composition that kills bacteria and dries quickly, see Col. 5, lines 53-63. For dialkoxymethylsiloxane and polyether/polysiloxane copolymer, as emollients that have little effect on the melt temperature of a composition, thereby remaining thermally stable above and below the melt temperature, see Col. 15, lines 32-50.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ratio of alcohol to water in the combined references to the range of 40:60-95:5, as taught by Asmus et al., because of the expectation of achieving a product that further kills bacteria and dries quickly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add dialkoxymethylsiloxane and polyether/polysiloxane copolymer, as taught by Asmus et al., to the composition of Mohammadi et al., because of the expectation of achieving a lotion that is thermally stable above and below the melt temperature of the composition.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

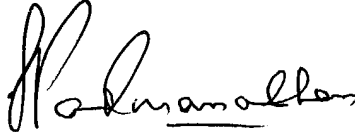
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER